

JAN 29 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RODOLFO VALDIVIA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-73223

Agency No. A079-530-169

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 20, 2009^{**}

Before: O'SCANNLAIN, SILVERMAN and BYBEE, Circuit Judges.

The motion to proceed in forma pauperis is granted. The Clerk shall amend the docket to reflect this status.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

This is a petition for review of the Board of Immigration Appeals' ("BIA") order denying petitioner's appeal of an Immigration Judge's ("IJ") denial of a late motion to reopen removal proceedings.

We review the denial of a motion to reopen immigration proceedings for abuse of discretion. *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008).

A motion to reopen immigration proceedings before the Immigration Court must be filed within 90 days after the date of entry of a final order of removal. 8 C.F.R. § 1003.23(b). Because petitioner's motion to reopen was filed beyond the 90-day deadline, and petitioner has not contended that any exceptions to this time limit apply, the BIA did not abuse its discretion in dismissing petitioner's appeal of the IJ's order denying petitioner's untimely motion to reopen immigration proceedings. *See Perez*, 516 F.3d at 773.

Accordingly, respondent's unopposed motion for summary disposition is granted because the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

All other pending motions are denied as moot. The temporary stay of removal shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED.